



Japan

Country Reports on Human Rights Practices - [2003](#)

Released by the Bureau of Democracy, Human Rights, and Labor
February 25, 2004

Japan is a parliamentary democracy based on its 1947 Constitution. Sovereignty is vested in the citizenry, and the Emperor is defined as the symbol of state. Executive power is exercised by a cabinet, composed of a prime minister and ministers of state, which is responsible to the Diet, a two-house parliament. The Diet, elected by universal suffrage and secret ballot, designates the Prime Minister, who must be a member of that body. The most recent national elections were in November. The Liberal Democratic Party (LDP), the New Conservative Party, and the Komeito Party make up the current coalition Government headed by Prime Minister Junichiro Koizumi. The judiciary is generally independent.

The Self-Defense Forces are responsible for external security and have limited domestic security responsibilities. The well-organized and disciplined police force is effectively under the control of the civilian authorities. However, there continued to be credible reports that police committed some human rights abuses.

In spite of a lengthy economic downturn, the industrialized, free market economy continued to provide the approximately 127 million residents with a high standard of living and high levels of employment.

The Government generally respected the human rights of its citizens; however, there were problems in some areas. There continued to be credible reports that police and prison officials physically and psychologically abused prisoners and detainees. Violence against women and children, child prostitution, and trafficking in women were problems. Women, the Ainu (the country's indigenous people), the Burakumin (a group whose members historically were treated as outcasts), and alien residents experienced varying degrees of societal discrimination, some of it severe and longstanding. According to Ministry of Justice figures, Legal Affairs Bureau offices and civil liberties volunteers dealt with 382,952 human rights-related complaints during 2002. Also during 2002, the Regional Legal Affairs Bureaus and the District Legal Affairs Bureaus received reports of 18,517 suspected human rights violations. However, staffing constraints and limited legal powers kept the administrative system for combating human rights violations weak, and many of these cases were ultimately resolved in the courts.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

Arbitrary or Unlawful Deprivation of Life

There were no reports of the arbitrary or unlawful deprivation of life committed by the Government or its agents during the year.

In 2002, a 49-year-old male inmate at Nagoya Prison died after guards, as a disciplinary measure, severely tightened around his abdomen a restraining device used to secure leather handcuffs in which his arms were locked, and then placed him in solitary confinement (see Section 1.c.). In 2001, two Nagoya Prison guards reportedly sprayed a high-power water hose at an "unruly" inmate, severely lacerating his rectum and colon. Despite surgery to repair the damage, the inmate died of an infection the following day. Prosecutors demanded a 2-year sentence for the Deputy Chief Prison Guard, who was involved in both cases. At year's end, seven other prison guards indicted on charges of inmate abuse awaited sentencing. In November, family members of a deceased prisoner and three former inmates sued the Government for abuses suffered in Nagoya Prison between 2001 and 2002. At year's end, the trial was still underway.

Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices, and the Penal Code prohibits violence and cruelty toward suspects under criminal investigation; however, reports by several bar associations, human rights groups, and some prisoners indicated that police and prison officials sometimes used physical violence, including kicking and beating, as well as psychological intimidation, to obtain confessions from suspects in custody or to enforce discipline. The National Police Law permits persons to lodge complaints against the police with national and local public safety commissions. These commissions may direct the police to conduct investigations. However, public confidence in the system remained low, and allegations persisted that the police and the public safety commissions remained lax in investigating charges of police misconduct.

The Constitution and the Criminal Code include safeguards to ensure that no criminal suspect can be compelled to make a self-incriminating confession or be convicted or punished in cases where the only evidence against the accused is his own confession. The appellate courts overturned some convictions in recent years on the grounds that they were obtained as a result of coerced confessions. In addition, civil and criminal suits alleging abuse during interrogation and detention have been brought against some police and prosecution officials.

Approximately 90 percent of all criminal cases going to trial included confessions, reflecting the priority the judicial system placed on admission of guilt. Confession was regarded as the first step in the rehabilitative process. The Government maintained that the high percentage of confessions, like the high conviction rate, was reflective of a higher standard of evidence needed to bring about indictment in the judicial system. However, Amnesty International pointed out that the confession-based system allows for incommunicado detention for up to 23 days, prolonged interrogations, and harsh psychological conditions.

A 2001 case of a prison death (see Section 1.a.) made public early in 2003 sparked a broad investigation into the prison system. Two other cases of abuse involving Nagoya Prison guards were reported in 2002. Eight guards were indicted for causing serious internal injuries to one prisoner and fatally injuring another using a restraining device consisting of a leather belt with attached leather manacles.

The Justice Ministry formed a special team to investigate 1,566 prisoner deaths from 1993 to 2002. A preliminary report suggested that nearly one-third of the cases involved suspicious circumstances. However, in June, the Ministry announced that there was evidence of abuse only in the two Nagoya fatalities. Regarding the other suspicious deaths, the Ministry said that approximately 10 deaths could be attributed to poor medical care. The authorities reported they had lost the documentation on nine deaths in Tokyo's Fuchu Prison. The remaining deaths were determined to be "not suspicious."

During the year, the Minister of Justice formed a Prison Reform Committee, which banned the use of the leather restraining device for a 6-month period until an appropriate substitute could be identified. During the 6 months, correctional facilities were obligated to inform the Ministry when they intended to use the device and to videotape the prisoners during its use. The committee also required prison officials to keep records of death for 10 years, instead of 3, and worked to develop a system that would allow prisoners to complain of mistreatment without fear of retribution. In May, the Minister formed a subcommittee to improve prison medical facilities.

Prison conditions met international standards. However, prisons in most areas of the country were not heated, and prisoners were given only minimal additional clothing to protect themselves against cold weather. There have been cases of frostbite among the prison population in recent years. In 2001, the Ministry of Justice requested funding for a 3-year plan to install heaters in prison buildings nationwide. Individual cells remained unheated. Prisoners were not allowed to purchase or receive supplementary food. The authorities read letters to and from prisoners, and some letters were censored, or, with a court order, confiscated. All visits with convicted prisoners were monitored; however, those prisoners whose cases were pending were allowed private access to their legal representatives. The Justice Ministry is not required to inform a condemned inmate's family prior to the person's execution. Human rights organizations reported that lawyers also were not told of an execution until after the fact, and that death row prisoners were held for years in solitary confinement with little contact with anyone but prison guards. Parole may not be granted for any reason, including medical and humanitarian reasons, until an inmate has served two-thirds of his or her sentence.

The Japanese Federation of Bar Associations and human rights groups have criticized the prison system, with its emphasis on strict discipline and obedience to numerous rules. Prison rules remained confidential. Wardens continued to have broad leeway in enforcing punishments selectively, including "minor solitary confinement," which may be imposed for a minimum of 1 and not more than 60 days during which the prisoner is made to sit (for foreigners) or kneel (for citizens) motionless in the middle of an empty cell.

In December, an advisory panel to the Justice Minister submitted a proposal to revise the 95-year-old Prison Law. The proposal calls for the establishment of a nongovernmental "watchdog" group to protect prisoners' rights and consider petitions about possible mistreatment; greater flexibility and transparency in prison operations; increased visitation and communications with families and acquaintances; improved medical facilities; regulations on punitive confinement; and increased prison staff. The Ministry of Justice is expected to submit new legislation, or an amendment to the current Prison Law, to the Diet by 2005.

Women and juveniles were housed in separate facilities from men; at times during the year, some women's detention facilities were operating over stated capacity. Pretrial detainees were held separately from convicted prisoners (see Section 1.d.).

Conditions in Immigration detention facilities met international standards.

The Government restricted access to prisons by human rights groups.

Arbitrary Arrest, Detention, or Exile

Constitutional provisions for freedom from arbitrary arrest or imprisonment generally were respected in practice. The law provides for judicial determination of the legality of detention. Persons may not be detained without charge, and prosecuting authorities must be prepared to demonstrate before trial that probable cause exists to detain the accused. Under the law, a suspect may be held in detention at either a regular detention facility or "substitute" (police) detention facility for up to 72 hours. A judge must interview suspects prior to detention. A judge may extend preindictment custody by up to 2 consecutive 10-day periods based on a prosecutor's application. These extensions were sought and granted routinely. Under extraordinary circumstances, prosecutors may seek an additional 5-day extension, bringing the maximum period of preindictment custody to 28 days.

The National Police Safety Commission oversees the National Police Agency (NPA), which has six internal bureaus: the Secretariat, the Administration Bureau, the Criminal Investigation Bureau, the Traffic Bureau, the Security Bureau, and the Communications Bureau; and regional bureaus in Shikoku, Kyushu, Tohoku, Kanto, Chubu, Kinki, and Chugoku. The Tokyo Metropolitan Police Communications Division and the Hokkaido Prefecture Police Communications Division function as local units with more autonomy than the units under regional jurisdictions. In addition, each prefecture has a prefectural police safety commission as well as a prefectural police agency, which is primarily funded by the prefecture's budget. There were approximately 15,000 koban (police boxes) located throughout the country. Corruption and impunity were not problems within either the national or the prefectural police forces.

Under the Criminal Procedure Code, police and prosecutors have the power to control or limit access by legal counsel when deemed necessary for the sake of an investigation. Counsel may not be present during interrogations at any time before or after indictment. As a court-appointed attorney is not approved until after indictment, suspects must rely on their own resources to hire an attorney before indictment, although local bar associations provided detainees with limited free counseling. Critics charged that access to counsel was limited both in duration and frequency; however, the Government denied that this was the case.

Critics charged that allowing suspects to be detained by the same authorities who interrogated them heightened the potential for abuse and coercion. The Government countered that cases sent to police detention facilities tended to be those in which the facts were not in dispute. A Justice Ministry regulation permits detention house officials to limit the amount of documentation related to ongoing court cases retained by prisoners.

The length of time before a suspect was brought to trial depended on the nature of the crime but rarely exceeded 3 months from the date of arrest; the average was 1 to 2 months.

The law does not permit forced exile, and it was not used.

Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice. The Cabinet appoints judges for 10-year terms, which can be renewed until judges reach the age of 65. Justices of the Supreme Court can serve until the age of 70 but face periodic review through popular referendums.

There are several levels of courts, including high courts, district courts, family courts, and summary courts, with the Supreme Court serving as the final court of appeal. Normally a trial begins at the district court level, and a verdict may be appealed to a higher court, and ultimately, to the Supreme Court.

The Government generally respected in practice the constitutional provisions for the right to a speedy and public trial by an impartial tribunal in all criminal cases. Although most criminal trials were completed within a reasonable length of time, cases may take several years to work their way through the trial and appeals process. In July, the Diet passed legislation aimed at reducing the average time required to complete criminal trials and civil trials that include witness examination. Its provisions include hiring substantial numbers of additional court and Justice Ministry personnel, revising bar examinations, establishing new graduate law schools to increase the overall number of legal professionals three-fold by 2010, and requiring that courts and opposing litigants jointly work to improve trial planning by allowing for earlier evidence collection and disclosure. The advisory panel on judicial reform released the official standards for setting up graduate law schools, and, in November, an education ministry panel approved 66 schools' programs to establish the country's first law schools in the spring of 2004. The first common admission exam was administered on August 31. In 2002, the Ministry of Justice, the Supreme Court, and the Japan Bar Association agreed to set up a new bar examination system by 2010. On July 16, a law took effect, which makes the Supreme Court responsible for accelerating proceedings in lower courts, imposes a 2-year time limit for courts to bring criminal and civil trials to conclusion, and requires the Government to take the legal and financial measures necessary to accomplish these goals.

In the extraordinary case of the Aum Shinrikyo 1995 sarin gas attack on the Tokyo subway system, the leader of the cult, Chizuo Matsumoto, and his follower, Masami Tsuchiya, who is charged with making the sarin, await a ruling on sentencing, which is scheduled for February 2004 (see Section 2.c.). The other accused persons have been tried, and those convicted have

been sentenced.

There is no trial by jury. The defendant is informed of the charges upon arrest and is assured a public trial by an independent civilian court with defense counsel and the right of cross-examination. However, in 2001 the Government's Judicial Reform Council recommended that randomly chosen members of the public be allowed to participate in determining rulings and penalties in criminal trials by deliberating the cases alongside professional judges. The Diet enacted implementing legislation in 2001, with the aim of adopting all of the advisory panel's reform proposals by 2004.

The defendant is presumed innocent. The Constitution provides defendants with the right not to be compelled to testify against themselves as well as to free and private access to counsel; however, the Govern